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Attorney for Plaintiff
SUSAN RAE OWENS

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

SUSAN RAE OWENS,

Plaintiff,

v.

ERICA L. BRACHFELD, A
PROFESSIONAL CORPORATION, D/B/A
BRACHFELD & ASSOCIATES, P.C.,
D/B/A LAW OFFICES OF BRACHFELD &
ASSOCIATES, P.C., a California
corporation, and ERICA LYNN
BRACHFELD, individually and in her
official capacity,

Defendants.

Case No. 07-04400-JF-PVT

**NOTICE OF MOTION AND
MOTION FOR SUMMARY
JUDGMENT, OR IN THE
ALTERNATIVE, PARTIAL
SUMMARY ADJUDICATION**

[Fed. R. Civ. P. 56]

Date: February 1, 2008
Time: 9:00 a.m.
Judge: Honorable Jeremy Fogel
Courtroom: 3, 5th Floor
Place: 280 South First Street
San Jose, California

TO: ALL DEFENDANTS AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on February 1, 2008, at 9:00 a.m., or as soon thereafter as this matter may be heard, in Courtroom 3 of the United States District Court, located at 280 South First Street, San Jose, California, before the Honorable Jeremy Fogel, United States District Judge, Plaintiff, SUSAN RAE OWENS ("Movant"), will move the Court for an Order granting the Movant summary judgment: (1) declaring that Defendants' collection letter (Exhibit "1") violates the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692c(b), 1692d, 1692d(3), 1692e(14), and 1692f; (2) declaring that the envelope Defendants' mailed the collection letter in (Exhibit "2") violates the Fair Debt Collection Practices Act, 15 U.S.C. § 1692e(14); (3) declaring that Defendants' collection letter (Exhibit "1") violates the Rosenthal Fair Debt Collection Practices Act, Cal. Civil Code §§

1788.13(a) and 1788.17; (4) declaring that the envelope Defendants' mailed the collection letter in (Exhibit "2") violates the Rosenthal Fair Debt Collection Practices Act, Cal. Civil Code §§ 1788.12(c), 1788.12(d), 1788.13(a), and 1788.17; (5) awarding Plaintiff statutory damages in an amount not exceeding \$1,000 pursuant to 15 U.S.C. § 1692k(a)(2)(A); (6) awarding Plaintiff statutory damages in an amount not less than \$100 nor greater than \$1,000 pursuant to Cal. Civil Code § 1788.30(b); (7) awarding Plaintiff statutory damages in an amount not exceeding \$1,000 pursuant to 15 U.S.C. § 1692k(a)(2)(A), as incorporated by Cal. Civil Code § 1788.17; (8) awarding Plaintiff the costs of this action and reasonable attorney's fees pursuant to 15 U.S.C. § 1692k(a)(3) and Cal. Civil Code §§ 1788.30(c) and 1788.17; and (9) awarding Plaintiff such other and further relief as may be just and proper.

In the alternative, Plaintiff will move the Court for an Order granting the Movant partial summary adjudication pursuant to Fed. R. Civ. P. 56(d) on the following factual issues: (1) Plaintiff is a "consumer" as that term is defined by 15 U.S.C. § 1692(a)(3) and a "debtor" as that term is defined by Cal. Civil Code § 1788.2(h); (2) Defendants are each a "debt collector" as that term is defined by 15 U.S.C. § 1692a(6); (3) Defendant, B&A, is a "debt collector" as that term is defined by Cal. Civil Code § 1788.2(c); and (4) the debt being collected by Defendants was a "debt" as that term is defined by 15 U.S.C. § 1692a(5) and a "consumer debt" as that term is defined by Cal. Civil Code § 1788.2(f).

This motion is made pursuant to Fed. R. Civ. P. 56 and Civil L.R. 56-1 on the grounds that Plaintiff is entitled to summary judgment, or in the alternative, partial summary adjudication as a matter of law.

This motion is based on this Notice of Motion and Motion for Summary Judgment, or in the Alternative, Partial Summary Adjudication, the Declaration of Susan Rae Owens in Support of Motion for Summary Judgment, the Declaration of Fred W. Schwinn in Support of Motion for Summary Judgment, the Memorandum of Points and Authorities in Support of Motion for Summary Judgment, or in the Alternative, Partial Summary Adjudication filed herewith, and such other evidence, argument, and authorities which may be presented at or prior to the hearing before this Court on this Motion, and such other and further matters of which this Court may take judicial

1 notice.

2 Please govern yourself accordingly.

3 CONSUMER LAW CENTER, INC.

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5 Dated: December 28, 2007

By: /s/ Fred W. Schwinn
Fred W. Schwinn, Esq.
Attorney for Plaintiff
SUSAN RAE OWENS